

# **EXHIBIT 24**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

DONNA CURLING, *et al.*

*Plaintiffs,*

v.

BRAD RAFFENSPERGER, *et al.*,

*Defendants.*

CIVIL ACTION

FILE NO. 1:17-cv-2989-AT

**STATE DEFENDANTS’ RESPONSE TO COALITION PLAINTIFFS’  
HEARING BRIEF ON EVIDENTIARY PRESUMPTION ARISING FROM  
SPOILIATION OF EVIDENCE**

Coalition Plaintiffs filed their “Hearing Brief on Evidentiary Presumption Arising from Spoliation of Evidence” [Doc. 548] (“Brief”) in a desperate attempt to distract the Court and the public from the complete lack of evidence of an actual compromise of Georgia’s election system. Faced with this lack of evidence, Coalition Plaintiffs apparently decided that the only way forward was to try and tar State Defendants with a frivolous argument that they destroyed evidence.

Let’s be absolutely clear: State Defendants have not destroyed or spoliated any evidence that is relevant to this case. Every item identified in Coalition Plaintiffs’ Brief remains available for their review in the normal course of discovery.

That Coalition Plaintiffs accuse State Defendants of destroying evidence is disingenuous on its face. Coalition Plaintiffs have been on notice from *before this litigation was filed* of repurposing plans for the webserver (and its backup)<sup>1</sup> at the Center for Election Services (“CES”)—they even attached documents related to the repurposing to their original complaints. They did not raise any claims related to any election in which the CES webserver was in use until well after the webserver and its backup were repurposed by non-party Kennesaw State University (“KSU”). KSU IT never informed the Secretary of State or the Attorney General’s office that they were going to repurpose the webserver or its backup.

Further, Coalition Plaintiffs have known for years that DREs and memory cards retain information about elections. State Defendants have done nothing to remove election information from DREs or memory cards and Coalition Plaintiffs again ignored this Court’s order to confer on preservation obligations before raising issues to the Court. [Doc. 122].

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<sup>1</sup> There were three different servers in use when CES was at Kennesaw State University: (1) a ballot-building GEMS Server that was separate and used only for building ballots; (2) an EPIC server that generated information used in ExpressPolls check-in machines; and (3) a webserver (with its backup) that was used for occasionally transmitting information to counties. Deposition of Michael Barnes [Doc. 472-10] (“Barnes Dep.”) at 9:25-11:1. The only category of servers Coalition Plaintiffs discuss in their Brief is the webserver and its accompanying backup—not the other servers.

Despite Coalition Plaintiffs' knowledge and this Court's order requiring a conference about any disputes over preservation obligations, Coalition Plaintiffs instead raised these issues *for the first time* while the preliminary-injunction hearing was already underway. And, in any event, the evidence sought by Coalition Plaintiffs remains available to them and has not been destroyed. Coalition Plaintiffs have also put forward no evidence that the memory cards or information in the internal memory is necessary to prove their case.

### **III. CONCLUSION.**

State Defendants have complied with their obligations to preserve evidence and have not destroyed or spoliated any relevant information. This Court should deny Coalition Plaintiffs' last-ditch attempt to cover for their lack of evidence in support of their preliminary-injunction motion.

Respectfully submitted this 30th day of July, 2019.

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